

payments on your earnings record and you may not be entitled to benefits on anyone else's earnings record; and

(b) *Person's death caused by an intentional act.* You may not become entitled to or continue to receive any survivor's benefits or payments on the earnings record of any person, or receive any underpayment due a person, if you were convicted of a felony or an act in the nature of a felony of intentionally causing that person's death. If you were subject to the juvenile justice system, you may not become entitled to or continue to receive survivor's benefits or payments on the earnings record of any person, or receive any underpayment due a person, if you were found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony.

[44 FR 34481, June 15, 1979, as amended at 47 FR 42098, Sept. 24, 1982; 52 FR 19136, May 21, 1987, 52 FR 21410, June 5, 1987; 58 FR 64888, Dec. 10, 1993]

OLD-AGE AND DISABILITY BENEFITS

§ 404.310 Who is entitled to old-age benefits.

You are entitled to old-age benefits if—

- (a) You are at least 62 years old;
- (b) You have enough social security earnings to be *fully insured* as defined in §§ 404.110 through 404.115; and
- (c) You apply; or you are entitled to disability benefits up to the month you become 65 years old. At age 65, your disability benefits automatically become old-age benefits.

[44 FR 34481, June 15, 1979, as amended at 51 FR 10616, Mar. 28, 1986]

§ 404.311 When entitlement to old-age benefits begins and ends.

(a) You are entitled to old-age benefits at age 65 beginning with the first month covered by your application in which you meet all the requirements for entitlement.

(b) You are entitled to old-age benefits if you have attained age 62, but are under age 65, beginning with the first month covered by your application

throughout which you meet all the requirements for entitlement.

(c) Your entitlement to benefits ends with the month before the month of your death.

[48 FR 21926, May 16, 1983]

§ 404.312 Old-age benefit amounts.

(a) If your old-age benefits begin at age 65, your monthly benefit is equal to the primary insurance amount.

(b) If your old-age benefits begin after you become 65 years old, your monthly benefit is your primary insurance amount plus an increase for retiring after age 65. See § 404.313 for a description of these increases.

(c) If your old-age benefits begin before you become 65 years old, your monthly benefit amount is the primary insurance amount minus a reduction for each month you are entitled before you become 65 years old. These reductions are described in §§ 404.410 through 404.413.

[44 FR 34481, June 15, 1979, as amended at 51 FR 12604, Apr. 14, 1986]

§ 404.313 Using delayed retirement credit to increase old-age benefit amount.

(a) *General.* (1) If you do not receive old-age benefits for the month you reach age 65 (retirement age) or for any later month before the month in which you reach age 70 (72 before 1984), you may earn delayed retirement credits which will increase your benefit amount when you retire. You earn delayed retirement credits for each of those months for which you are fully insured and are eligible for but do not receive old-age benefits, either because of your work or earnings, or because you have not applied for benefits. If you were entitled to old-age benefits before age 65 you may still earn delayed retirement credit for months beginning with age 65 in which your benefits were reduced to zero because of your work or earnings.

(2) Retirement age is the age at which entitlement to full benefits may begin and is the age at which you may begin to earn delayed retirement credits. Age 65 is the retirement age for workers who reach that age before the year 2003. For workers who reach age 65

after 2002, retirement age will gradually increase from 65 to 67, depending on each person's date of birth.

(b) *How we determine delayed retirement credits*—(1) *General*. The amount of the delayed retirement credit depends on the year you reach retirement age, and the number of months you are eligible for and do not receive old-age benefits from retirement age to age 70 (72 before 1984). We total these months, which need not be consecutive, multiply the total by the applicable percent as provided in paragraphs (b)(2), (3), and (4) of this section, multiply your benefit amount by this product, and round to the next lowest multiple of \$0.10 if the answer is not already a multiple of \$0.10. The result is your delayed retirement credit which we add to your benefit amount. The supplementary medical insurance premium, if any, is then deducted and the result is rounded to the next lowest multiple of \$1.00 if it is not already a multiple of \$1.00.

(2) *Before 1982*. If you reach age 65 before 1982, your delayed retirement credit equals one-twelfth of one percent of your benefit amount times the number of months after 1970 in which you are age 65 or older and for which you are eligible but do not receive old-age benefits.

(3) *After 1981 and before 1990*. If you reach age 65 after 1981 and before 1990, your delayed retirement credit equals one-fourth of one percent of your monthly benefit amount times the number of months in which you are age 65 or older and for which you are eligible but do not receive old-age benefits.

(4) *Beginning with 1990*. If you reach age 65 in 1990 or later, the rate of the delayed retirement credit (i.e., one-fourth of one percent as stated in paragraph (b)(3) of this section) is increased by one-twenty-fourth of one percent in each even year through 2008. Thus, depending on when you reach age 65, your delayed retirement credit percent will be as follows:

Year you reach age 65	Delayed retirement credit percent
1990	7/24 of 1 percent.
1991	7/24 of 1 percent.
1992	1/3 of 1 percent.
1993	1/3 of 1 percent.
1994	5/8 of 1 percent.
1995	5/8 of 1 percent.

Year you reach age 65	Delayed retirement credit percent
1996	5/12 of 1 percent.
1997	5/12 of 1 percent.
1998	1 1/24 of 1 percent.
1999	1 1/24 of 1 percent.
2000	1/2 of 1 percent.
2001	1/2 of 1 percent.
2002	1 3/24 of 1 percent.
2003	1 3/24 of 1 percent.
2004	7/12 of 1 percent.
2005	7/12 of 1 percent.
2006	5/6 of 1 percent.
2007	5/6 of 1 percent.
2008 and later	5/6 of 1 percent.

Example: Alan was qualified for old-age benefits when he reached age 65 in January 1983, but decided not to apply for old-age benefits immediately because he was still working. When he became age 66 in January 1984, he stopped working and applied for these benefits beginning with that month. Based on his earnings, his primary insurance amount was \$226.60, and his monthly old-age benefit after deducting his supplemental medical insurance premium was \$211.00 (\$226.60 minus \$15.50 SMI premium equals \$211.10, rounded to \$211.00), if no delayed retirement credits were added. However, he did not receive benefits for the 12 months from the month in which he became 65 (January 1983) until the first month in which he stopped working (January 1984). Therefore, his monthly old-age benefit of \$226.60 was increased by three percent (one-quarter of one percent times 12 months) to yield a total \$233.39, which rounded to the next lower multiple of \$0.10 is \$233.30. After deducting the SMI premium and rounding to the next lower multiple of \$1, the benefit amount is \$217.00.

(c) *Effective date of delayed retirement credit*. If you are entitled to benefits, we examine our records after the end of each calendar year to determine whether you have earned the delayed retirement credit (i.e., whether there were months in which you were fully insured and eligible for benefits, but did not receive them). Any increase in your benefit amount due to the delayed retirement credit is effective beginning with January of the year after the year the credit is earned. If you are age 65 or older and eligible for old-age benefits but have not applied, we compute the delayed retirement credit for the year(s) before you applied and pay it to you as part of your first benefit check. The delayed retirement credit for the year you applied and later years is added to your benefits beginning with

the following January. However, in either case, in the year in which you attain age 70 (72 before 1984), we compute the credit through the month before the month you reach that age and add it to your benefit amount beginning with that month.

(d) *Delayed retirement credit and special minimum primary insurance amounts.* We do not add any delayed retirement credit to your old-age benefit if your benefit is based on the special minimum primary insurance amount described in § 404.260. We add the delayed retirement credit only to old-age benefits based on your regular primary insurance amount, i.e., as computed under one of the other provisions of subpart C of this part. If your benefit based on the regular primary insurance amount plus your delayed retirement credit is higher than the benefit based on your special minimum primary insurance amount, we pay the higher amount to you. However, if the special minimum primary insurance amount is higher than the regular primary insurance amount without the delayed retirement credit, we use the special minimum primary insurance amount to determine the family maximum and the benefits of others entitled on your earnings record.

(e) *Effect of delayed retirement credit on other benefits—(1) Surviving spouse or surviving divorced spouse.* If you earned delayed retirement credits during your lifetime, we compute your surviving spouse's or surviving divorced spouse's benefit based on your regular primary insurance amount plus the amount of the delayed retirement credit. All delayed retirement credits, including credits in the year of death, can be used in computing your surviving spouse's or surviving divorced spouse's benefit beginning with the month of death. We compute the delayed retirement credit up to, but not including, the month of death.

(2) *Other family members.* We do not use your delayed retirement credits to increase the benefits of other family members entitled on your earnings record.

(3) *Family maximum.* The delayed retirement credits are added to your benefit after we compute the family maximum. However, your delayed retire-

ment credits which are used to compute your surviving spouse's or surviving divorced spouse's benefit are added to the spouse's benefits before we reduce for the family maximum.

[51 FR 12605, Apr. 14, 1986]

§ 404.315 Who is entitled to disability benefits.

(a) *General.* You are entitled to disability benefits while disabled before age 65 if—

(1) You have enough social security earnings to be *insured for disability*, as described in § 404.130;

(2) You apply;

(3) You have a disability, as defined in § 404.1505, or you are not disabled, but you had a disability that ended within the 12-month period before the month you applied; and

(4) You have been disabled for 5 full consecutive months. This 5-month waiting period begins with a month in which you were both insured for disability and disabled. Your waiting period can begin no earlier than the 17th month before the month you apply—no matter how long you were disabled before then. No waiting period is required if you were previously entitled to disability benefits or to a period of disability under § 404.320 any time within 5 years of the month you again became disabled.

(b) *Prohibition against reentitlement to disability benefits if drug addiction or alcoholism is a contributing factor material to the determination of disability.* You cannot be entitled to a period of disability payments if drug addiction or alcoholism is a contributing factor material to the determination of disability and your earlier entitlement to disability benefits on the same basis terminated after you received benefits for 36 months during which treatment was available.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21930, May 16, 1983; 51 FR 10616, Mar. 28, 1986; 51 FR 16166, May 1, 1986; 53 FR 43681, Oct. 28, 1988; 57 FR 30119, July 8, 1992; 60 FR 8145, Feb. 10, 1995]

§ 404.316 When entitlement to disability benefits begins and ends.

(a) You are entitled to disability benefits beginning with the first month covered by your application in which